**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B07
PLR-124535-18

Date:
February 15, 2019

Re: Request for Extension of Time to Make the Election Not to Deduct the Additional First Year Depreciation

LEGEND:

Taxpayer:

Date:

State:

Business:

Entity One:

Subsidiary One:

Entity Two:

Subsidiary Two:

Subsidiary Three:

Property:

Amount:

Firm:

Dear :

This letter responds to a letter dated August 9, 2018, submitted by Taxpayer requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the additional first year depreciation under § 168(k) of the Internal Revenue Code for certain classes of qualified property placed in service in the taxable year ending Date.

All references in this letter ruling to § 168(k) are treated as a reference to § 168(k) as in effect on the day before the date of the enactment of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a limited liability company that is classified as a partnership for Federal income tax purposes. Taxpayer files its federal tax returns on a calendar year basis. Taxpayer's overall method of accounting is the accrual method.

Taxpayer owns and operates Business in State. Taxpayer is owned jointly by Entity One (through Subsidiary One, a disregarded entity) and Entity Two (through Subsidiary Two and Subsidiary Three).

During the taxable year ending on Date, Taxpayer placed in service Property with a total unadjusted basis of Amount, and that is qualified property under § 168(k)(2). On its timely filed federal income tax return for its taxable year ended Date, Taxpayer deducted the additional first year depreciation for the Property.

Firm was engaged to prepare Taxpayer's federal income tax return for the taxable year ended Date. Entity One, Entity Two, and Subsidiary Two reviewed this federal income tax return prior to its filing, but were not aware at that time of certain unfavorable state tax implications to Entity One under State law stemming from Taxpayer's deduction of the additional first year depreciation on its federal income tax return for the taxable year ending Date. These implications were discovered after the

deadline for filing Taxpayer's federal income tax return in connection with the preparation of Entity One's State income tax return.

Firm also was not aware that Taxpayer's claiming the additional first year depreciation on its federal income tax return for the taxable year ending Date, would result in unfavorable State tax implications that impacted Entity One. As a result, Firm did not advise Taxpayer to make the election not to deduct the additional first year depreciation for the Property placed in service during the taxable year ending Date.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to §§ 301.9100-1 and 301.9100-3 to make the election under § 168(k)(7) not to deduct the additional first year depreciation under § 168(k) for all Property placed in service in the taxable year ending Date.

LAW AND ANALYSIS

Section 168(k)(1) allows, in the taxable year that qualified property is placed in service, a 50-percent additional first year depreciation deduction for qualified property placed in service by the taxpayer before January 1, 2020 (or January 1, 2021, for qualified property described in §§ 168(k)(2)(B) or 168(k)(2)(C)).

Section 168(k)(7) allows a taxpayer to elect not to deduct the additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year.

Section 4.04 of Rev. Proc. 2017-33, 2017-19 I.R.B. 1236, 1240, provides guidance regarding the election under § 168(k)(7) not to deduct the additional first year depreciation (the § 168(k)(7) election). Section 4.04(1) of Rev. Proc. 2017-33 provides that the rules for making the § 168(k)(7) election are similar to the rules for making the election under § 168(k)(2)(D)(iii) as in effect before the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (Dec. 18, 2015). As a result, the § 168(k)(7) election applies to all qualified property that is in the same class of property and placed in service in the same taxable year. Section 4.04(2) of Rev. Proc. 2017-33 provides that generally rules similar to the rules in § 1.168(k)-1(e)(2), (3), (5) and (7) of the Income Tax Regulations apply for purposes of § 168(k)(7).

Section 1.168(k)-1(e)(2) defines the term "class of property" for purposes of the election not to deduct additional first year depreciation. Such term means, among other things, each class of property described in § 168(e) (for example, 5-year property).

Section 1.168(k)-1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer.

Section 1.168(k)-1(e)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The instructions to Form 4562 for the taxable year ending Date, provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election.

Under § 301.9100-1, the Commissioner of Internal Revenue has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to make the election not to deduct the additional first year depreciation under § 168(k)(1) for all Property placed in service in the taxable year ending Date, that qualify for the additional first year depreciation deduction. This election must be made by Taxpayer filing an amended federal income tax return for that taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for Property placed in service by Taxpayer during that taxable year.

In addition, a copy of this letter ruling must be attached to that amended return. A copy is enclosed for that purpose. Alternatively, a taxpayer filing its federal income tax return electronically may satisfy this requirement by attaching a statement to the amended return that provides the date and control number of the letter ruling.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is expressed or implied on whether any item of depreciable property placed in service by Taxpayer during the taxable year ending Date, is eligible for the additional first year depreciation deduction.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney, we are sending a copy of this letter ruling to Taxpayer's authorized representatives. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Kathleen Reed

KATHLEEN REED
Branch Chief, Branch 7
Office of the Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:
Copy of this letter
Copy for section 6110 purposes